

WHAT YOU SHOULD KNOW

ABOUT

YOUR CHAPTER 13 CASE

This pamphlet answers many of the questions that will come up during your Chapter 13 plan. Read this completely to understand your obligations and responsibilities, and refer to it later when you have questions.

Your Trustee is:

Thomas H. Billingslea, Jr.
Chapter 13 Trustee
P.O. Box 671
San Diego, CA 92112
(619) 233-7525

(KEEP THIS BOOKLET FOR FUTURE REFERENCE)

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WHAT YOU SHOULD KNOW ABOUT YOUR

CHAPTER 13 CASE

INTRODUCTION. Chapter 13 is one method under the Bankruptcy Code to obtain relief from your creditors while at the same time providing a fair means to pay them back as much as you can over a period of three to five years. It allows you to keep most or all of your property during the time you are paying creditors back, and it permits you to modify some contract payments, interest rates and length of obligations. Creditors can take action against you only after you have had "your day in court" and the Judge allows it. Chapter 13 has gained widespread acceptance across the country as an attractive alternative to a "straight bankruptcy" under Chapter 7 of the Bankruptcy Code.

CASE NUMBER. At the time your Chapter 13 petition was filed, the Bankruptcy Court assigned a number to your case. This case number is very important. You will need it whenever you call or write to the Trustee's Office or when you make a payment to the Trustee.

YOUR ATTORNEY. Under the rules of the Bankruptcy Court, your attorney must continue to appear and represent you for as long as your case is active or until the Judge permits your attorney to withdraw from your case. If you ever have a legal question concerning your case, a creditor, your rights, or your options, make it a rule to ask your attorney first. In many cases, your attorney will be paid his or her legal fee through your Chapter 13 plan. Be sure that you and your attorney have discussed fully whether additional legal services during your plan will cost you more money, or whether the initial fee will cover all legal services. Bear in mind that all legal fees must be reviewed and approved by the Bankruptcy Judge. You may even change attorneys during the life of your plan, but please make sure your new and old attorneys file a substitution of attorney with the Bankruptcy Court.

NEW ADDRESS?? The Trustee must have your exact mailing address for as long as you are in Chapter 13. All notices, letters, checks, etc. will be mailed to the address which you listed in your petition unless you or your attorney tell us to forward the documents to a different address. If you ever move or change your mailing address, you must inform your attorney and the Trustee of your new address *in writing*. Any change in address or employment must be reported to the Chapter 13 office immediately.

CALLS TO THE TRUSTEE'S OFFICE. The Chapter 13 Trustee's phone number is (619)233-7525. The office is open five days a week from 8:00 a.m. to 4:30 p.m.. Do not feel that you have to talk personally with the Trustee. The Trustee and his staff cannot give any legal advice and encourage you to direct all legal questions to your attorney.

PAYMENTS. You may make your Chapter 13 payments through a payroll deduction at your place of employment. It will be easier to keep current on your payments to the Trustee if the payment is automatically made on a regular basis by your employer. **MONEY ORDERS or CASHIER'S CHECKS MUST INCLUDE:** (1) your NAME. (2) your ADDRESS, and (3) your CASE NUMBER. **DO NOT MAIL CASH.** Please make the money order payable to: Thomas H. Billingslea, Jr., Trustee, and forward all payments to:

**Thomas H. Billingslea, Jr., Trustee
P.O. Box 671
San Diego, CA 92112**

PAYROLL DEDUCTION ORDERS. At any time after you filed your Chapter 13 petition, you may voluntarily request that the Trustee deduct your plan payments directly from your wages. Should you wish to take advantage of this easy and convenient way to make payments, please contact your attorney.

Please also note that if you are late making payments, the Judge may issue an order to your employer to deduct your plan payment from your paycheck and send it to the Chapter 13 Trustee.

While you are under the protection of Chapter 13, your employer is prohibited from honoring any garnishments (except ongoing child support or otherwise provided in the order). It is important that both you and your employer understand that the Trustee is NOT garnishing your wages. A garnishment or attachment can only derive from someone to whom you owe money. You do not owe any money to the Court or the Trustee. The court is just carrying out its duty to administer the plan you voluntarily filed and in which you gave the Court exclusive jurisdiction over your future pay as long as you are in a Chapter 13 plan. Most employers understand that you are making a serious effort to repay your debts, and think more highly of an employee who seeks to pay debts, rather than avoid them. If your employer does not honor a Chapter 13 wage order, let your attorney and the trustee's office know immediately so that the appropriate action may be taken. If your employer has any questions, he or she may call our office for an explanation.

PLAN LENGTH. The Trustee has up to a 10 percent fee on each Chapter 13 Plan. This fee is allowed by the United States Trustee and should have been explained to you by your attorney. The Trustee's fee may be adjusted from time to time by the U.S. Trustee. Often debtors experience some confusion over this compensation as it may cause your plan to last a longer period of time. Interest, which may or may not be paid to your creditors depending on your particular plan, also adds length and dollars to your plan.

It is very rare for a plan to last the exact number of months it was originally scheduled to run.

There are several reasons for this other than compensation and interest paid. It often happens that a creditor files for a larger amount than you thought you owed. Further, interest rates may be charged, or you may have forgotten a creditor which must be added to your plan. On the other hand, some creditors may not file a proof of claim; this may shorten the plan length.

It is important to remember that the length is a close approximation at the beginning of your plan. The length is dependent on many factors which may change during the course of your plan. You must contact your attorney if you have questions concerning your plan's length.

The plan as originally confirmed cannot exceed sixty (60) months, the time limit for completion allowed by the Court. If this situation occurs in your plan, your attorney can help you in resolving this problem.

OBLIGATION TO PAY. Even if the Court will order your employer to deduct plan payments and send them to the Trustee, you must remember that you have the obligation to make sure payments are made.

Note: It may take several weeks for your payroll deduction to become effective. In the meantime, be sure to make your regular payments directly to the Trustee. The Judge's willingness to approve your plan will depend on the good faith effort you demonstrate by your payment record prior to the confirmation hearing. If your employer ever fails to make a payroll deduction, you must tell your attorney that the deduction was not made and you must send the needed plan payment to the Trustee preferentially by money order, postal order or cashier's check.

Payments should be sent to:

**Thomas H. Billingslea, Jr.
Chapter 13 Trustee
P.O. Box 671
San Diego, CA 92112**

DON'T FORGET YOUR CASE NUMBER!!!

It is a good idea to keep your pay stubs to demonstrate that the deductions are taking place. If there is ever any discrepancy in your payment history, you will have complete records demonstrating all the deductions that were made. **PLEASE REMEMBER:** if you ever receive a regular paycheck, in which the Trustee Payment was not withheld, you should immediately mail the payment yourself.

BUSINESS CHAPTER 13. Debtors engaged in business are subject to the same requirements, restraints, and jurisdiction as individuals with only personal debts. Since debtors who are self-employed in a small business have no employer, it will be necessary for those particular debtors to send payments themselves directly to the Trustee. Payments shall be preferentially in the form

of a cashier's check, personal check, or money order. You should contact your attorney if you have any legal questions.

ADJUSTMENT OF PAYMENTS. It is extremely important for you to let your attorney know if something interrupts your pay and makes it impossible for you to make payments to the Trustee. In some cases, depending on how long your plan has been going and the kinds of creditors you have, adjustments may be made on payments to prevent undue hardship. Do not confuse this type of adjustment with an emergency. If the payment adjustment required is more than just a temporary adjustment, please contact your attorney to review and revise your plan.

CONTACTS BY CREDITORS. All the creditors that you list on your Chapter 13 petition are under an automatic restraining order which prohibits them from *contacting you or your employer in any way*. If you get notices in the mail from your creditors, send them to your attorney. Delinquent notices need not cause any great concern. But if you get a more personal, direct contact from a creditor, such as a telephone call, a personal letter, a summons or a visit in person, you should immediately inform them that you are under Chapter 13 and give them your case number, the *Trustees name* and address, *and your attorneys name* and address. You should not discuss the debt with them in any manner. By the same token, you should not contact your creditors. Be sure you tell your attorney the name of the person who contacted you. Your attorney may want to follow up on such a call and the name of the person calling you is very important.

BALANCE DUE CREDITORS. You may not deal with a creditor, just as a creditor may not directly deal with you. Generally, (and absent a specific provision in a court approved plan) you cannot pick and choose some particular creditor and pay him "on the side," because all of your debts must be dealt with through the Court. Any payment which you make to a creditor may well be illegal. All creditors must be paid under the authority of the Court, by the terms of the law, and not by any personal desires. The Trustee will mail you and your attorney a copy of your case report twice a year-in March and September. This record will show all payments received by the Trustee and to whom your money was sent.

CLAIMS OF CREDITORS. While the creditors which you list on your Chapter 13 petition are given the opportunity to file a claim for payment, they are allowed only 90 days from the First Meeting of Creditors to file their claim, except for tax claims, which can be filed up to 6 months after the date you filed your case. After you have been under the plan for a while, we will send you a complete list of every creditor who has filed a claim in your case and the amount which they claim you owe them. You should read and examine this list, called a "Notice of Intent to Pay Claims," very carefully. If a creditor is listed incorrectly or any amount claimed does not appear correct, you should contact your attorney at once. Unless your attorney objects to a claim, we will pay based upon the amount the creditor requests, not the amount listed on your petition. If a creditor does not file a claim within the time allowed and if you want that creditor paid in your Chapter 13 case, please have your attorney file a claim for the creditor.

LATE CLAIMS. As noted above, most creditors have 90 days after the First Meeting of Creditors to file their claims for payment. Generally, unsecured creditors are not entitled to payment if they file after that date. Secured claims may be an exception to this limit. Any claim which is not allowed, will not be paid. Unless you object to paying such a claim, however, the Trustee may pay the claim, even if it was filed late.

CREDITORS NOT LISTED. Creditors not listed by you when you filed can cause quite a few problems. There are two kinds of unlisted creditors: those you owed money to when you filed and forgot to list-we call them "unlisted creditors"-and those creditors who have a bill that was incurred after you filed. We call this type "post-petition creditors." If you discover an unlisted creditor, one you owed but forgot to list, you must let your attorney know the details immediately. Your attorney can include this creditor in your plan and protect you. Time is very important here, so do not delay if one shows up. Post-petition debts should be brought to the attention of your attorney so that a review of your plan can be made.

HOW CREDITORS ARE PAID. The money which you pay to the Trustee is used to pay all expenses, including any attorney fees to be paid through the plan and your creditors. There are four basic types of claims: (1) administrative, (2) priority, (3) secured and (4) unsecured. Generally, you can say that we pay administrative costs, and your attorney's fees, first; then creditors with liens on your property (secured claims); then taxes and finally everyone else (unsecured claims).

Often, plans that are confirmed require that the Trustee begin paying unsecured creditors only after administrative, priority, and secured claims are paid. Secured claims may accrue interest charges under Chapter 13, but unsecured creditors are not allowed interest from the date of filing of your Chapter 13, except for unusual situations. For these reasons, it could be several months before the first payment is made on the unsecured claims.

COSIGNERS AND COMAKERS. A cosigner, comaker or guarantor on any of your consumer debts is generally protected from contact by the creditor as long as you remain under Chapter 13. This codebtor protection will only protect cosigners, comakers or guarantors for the amount of debt your plan proposes to pay. If you plan is not scheduled to pay such creditors in full, a creditor may obtain permission to collect from the cosigner, comaker or guarantor, the part of the debt that your plan is not going to pay.

DISCHARGE. When you have successfully completed your plan payments you will receive notice from the Court, which finally will "discharge" you from your case. This discharge also acts as an injunction against certain creditors, prohibiting them from taking unauthorized action against you after your case is ended. However, if you have failed to pay a secured claim in your plan, then the lien on the collateral will still exist despite the discharge of your personal obligation to pay. Furthermore, some claims are not discharged by completion of the plan. Your attorney can help identify these claims for you and develop strategies for paying them, if they were not paid in full in the plan.

REQUEST FOR DISMISSAL. Federal Bankruptcy law allows you to request that your Chapter 13 case be dismissed at any time. No one can force you to remain under a Chapter 13 plan if you do not wish to continue. If you desire to stop your case, contact your attorney. However, you should understand that a dismissal will reactivate all unpaid or disputed debts, all interest, finance charges, all late charges not allowed by the Court, and all debts of creditors who did not file their claims. In addition, you will be forced to deal with those creditors on their terms, not yours or the Court's. The request for dismissal of your plan must be made to the Court. Contact your attorney if you desire to voluntarily dismiss your case.

STOPPING PAYROLL DEDUCTIONS & REFUND POLICY. It is the Trustee's policy to cease payroll deductions as quickly as possible when a plan is completed. This is done once a month when the Trustee compiles a list of cases that are completed or nearing completion. However, to ensure that the Trustee has paid all claims filed with the Bankruptcy Court, a review of the Court's records is performed. On rare occasions, the Court may receive a claim which the Trustee did not, and therefore it was not paid by the plan yet. Any additional claims will be scheduled for payment according to the terms of the Order Confirming Plan. As soon as all claims are paid, the Trustee will notify your employer to stop the payroll deduction. Usually, there is a delay in processing these instructions, and your employer may remit some additional payments. These funds will be returned to you.

When it appears that your case is completed, the Trustee's office will generate a "Final Account and Report," as well as any applicable debtor refund check.

The Trustee will submit the "Final Account and Report" to the Court and will notify you, your attorney and all creditors by mail of the completion of your case. This procedure usually takes about sixty days.

FAILURE TO PAY. If the Trustees office fails to receive payments on your Chapter 13 plan, the Trustee or a creditor will seek to have your case dismissed. If something happens to your job, you become disabled, get laid off, or get a different job, consult with your attorney at once to counsel you on the best way to protect yourself during such time. Your plan obligates you to send your Chapter 13 payments to the Trustee no matter what happens to your job, unless the Judge allows you to stop or reduce payments.

The Trustee will send you a notice in writing when the Trustee seeks to have your case dismissed. In the role of administrator of Chapter 13 cases, the Trustee bears the dual responsibility of looking out for the interests of both debtors and creditors alike. Thus, whenever a debtor is substantially delinquent in payments under the plan, the Trustee will review the case for dismissal.

PAYING MORE THAN REQUIRED. If you are ever able to increase your payments to the Trustee, this may have a pronounced impact on finishing your plan ahead of time. Paying a little more than required may reduce interest costs, administrative expenses and cause the payroll

deduction to stop that much sooner. If you wish to make a single extra payment, you may do that by sending a money order or a cashier's check to the Trustee. This may also cause your plan to be shorter. However, do not miss your scheduled monthly plan payment because you doubled up payments in a prior month. Also, please speak to your attorney if making these extra payments would cause your plan to be paid within 36 months.

SIX-MONTH REPORT OF PLAN ACTIVITY. Every March and September you will receive from the Trustee a Six-Month Report of Receipts and Disbursements, which includes all the financial activity on your case during the previous six months. This report will itemize all payments the Trustee has received from you, as well as all payments the Trustee has made to creditors on your behalf. If you have any questions regarding this report, please contact your attorney. The report may not accurately reflect the term or dividend to unsecured creditors until your Order Allowing Claims is signed. Appendix A at the back of this booklet explains how to read the report.

INCOME TAX INFORMATION. The Trustee's Office is not in a position to advise you on how to file your income tax return. The IRS and FTB may send any refunds directly to the Trustee's Office. Your income tax refund is considered disposable income and upon receipt by the Trustee's Office it will be disbursed to your creditors. Consult with your tax advisor so that your withholdings (or quarterly deposits if you're self-employed) match your expected federal and state post-petition (current) tax liability.

CONTACT BY CREDITOR AFTER COMPLETION OF A CHAPTER 13. When a creditor has had its claim paid by Chapter 13, in full, it should send the paid-in-full papers to you. Even if the creditor fails to do this, it is not too significant since the official records of the Court showing your plan is completely paid would overrule most claims the creditor might make for additional money. Should you receive any request for additional money after your plan is completed, contact your attorney.

INHERITANCE. If you should become entitled to receive any benefit as the result of the death or a person dying you are required by law to report this immediately in writing to the court and the Trustee. Failure to do so can have grave consequences.

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HOW TO INTERPRET THE TRUSTEE'S REPORT

Following this explanation is a sample copy of a Trustee's Report of Receipts and Disbursements. This will be sent to you at least twice a year.

REVIEW IT CAREFULLY AND CALL YOUR ATTORNEY'S OFFICE IMMEDIATELY IF YOU DO NOT UNDERSTAND SOMETHING IN THE REPORT. An explanation for each number is as follows:

1. Your name and address.
2. Your plan payment amount.
3. Dates covered in this Report. (All Trustee's Reports cover a six (6) month period).
4. Date that your Chapter 13 bankruptcy was filed with the Court.
5. Date of your First Meeting of Creditors.
6. Date your plan was confirmed.
7. Chapter 13 case number.
8. This section of the Report lists all moneys received during the last six (6) months.
9. The "CLM" column is simply the numbering of all your creditors listed in the plan.
10. The "CLS" column is the classification of each creditor claim.
Class 1 is a secured claim; Class 2 is a priority claim; Class 3 is an unsecured claim; and Class 4 is a priority claim; Class 5 is a late unsecured claim; and Class 6 is a special claim.
11. Names of all your creditors.
12. The "Codes" section of the Report is used for purposes of informing the computer of who is to be paid first. The lower the code, the faster that claim will be paid.

13. The “MO. PYMTS” column indicates any monthly payments to a specific creditor.
14. The “Debt” column lists the total debt that the creditor listed in their proof of claim.
15. The “F%” column lists the percentage that will be forgiven to a particular claim. For example, if it lists a "60" in that column, we will pay a total of 40% to that particular claim.
16. The “Balance Due” column lists the balance due, if any, on the claims to be paid through the plan. The word "Forgiven" means that the plan provides no payment to this creditor. "Direct" means that this claim is not being paid through the Trustees office, but is being paid directly by the debtor. A "disputed" in this column indicates that a claim was listed as disputed in your schedules or in your plan. Also, the date that each claim was paid will be listed in this column with the month and the year. For example “PD 96-11 means that the claims was paid in November of 1996.
17. The “MO” column indicates the month that the Trustee’s check was disbursed to the creditor. A letter "C" indicates that the check was canceled.
18. This column indicates the Trustee’s check number that was disbursed.
19. This column indicates the amount of each check disbursed by the Trustee.
20. The “Receipts” Column indicates the total receipts received by the Trustee’s Office since the beginning of the plan.
21. This is the total balance of the secured claims that were filed and are yet to be paid through the plan.
22. This is the total amount of the unsecured claims that were filed and are yet to be paid through the plan if the base amount is not reached first.
23. This is the amount of the money paid in as of the date of the report, but not yet paid out to creditors.
24. This is the approximate amount that you need to complete your plan. Should you wish to pay off your Chapter 13 plan, please call our office for the exact payoff amount.